

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.1548 of 2018 (O&M)
Date of Decision: July 03, 2018

Devinder Kumar & ors

---Appellant

Versus

Sarwan Singh & ors

---Respondent

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.Yogesh Goyal, Advocate for the appellant(s).

Mr.Rahul Popal, Advocate for Caveator/respondents

HARINDER SINGH SIDHU, J.

The defendants have filed this regular second appeal against the judgments of the Courts below whereby the suit of the plaintiff has been decreed.

The plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 22.3.2005 regarding land measuring 30 marlas i.e. 30/106 share of land measuring 15 kanals 6 marlas bearing khasra no.413 (15k-06m), khata-khatauni No.3/16 situated in village Wadali Guru, Tehsil and District Amritsar.

The case of the plaintiff was that late Chaman Lal, predecessor-in-interest of the defendants, had entered into agreement to sell the suit property to the plaintiff on 22.3.2005 for a consideration of Rs.18 lacs. Rs.5 lacs. were paid as earnest money to Chaman Lal vide cheque no.1470382 dated 23.3.2005 of Amritsar Central Cooperative Bank, Ltd. Amritsar. Another sum of Rs.2,50,000/-

was paid vide cheque no.1470383 of Amritsar Central Cooperative Bank Limited, Amritsar on 12.4.2005. It was agreed that if Chaman Lal failed to execute the sale deed on the stipulated date he would be liable to pay double the amount of earnest money. The sale deed to be executed on or before 6.3.2006. The plaintiff was always ready and willing to perform his part of contract but the defendants have failed to do so. The plaintiff remained present in the office of Sub-Registrar, Amritsar on 6.3.2006 along with balance sale consideration and amount for other misc. expenses but the defendants did not turn up to execute the agreement so the plaintiff got his presence marked before the Sub-Registrar, Amritsar.

The defendants are the legal heirs of Chaman Lal who died on 2.2.2006. Defendants No. 1 to 3 are his sons. Defendants No. 4 and 5 are his daughters. Defendant No. 6 was his widow. Defendant Nos.4 and 5 did not contest the suit and were proceeded against ex parte.

In the written statement filed by defendants No.1 to 3 they denied that any agreement to sell was executed by Chaman Lal or that any amount had been received by him as earnest money. It was submitted that Chaman Lal was a Commission Agent and the plaintiff used to sell his crops through Chaman Lal at his shop and used to take advance from him. The cheques, if any, issued to late Chaman Lal must have been for the discharge of the liability of the plaintiff.

In order to prove his case, the plaintiff examined Prem Chand, Accountant, Amritsar Central Cooperative Bank, Ltd. Amritsar as PW1. He proved on record certified copies of cheques No.1470382 and 1470383 as Ex.P1 and P2 and certified copy of statement of account of the plaintiff as Ex.PW3. The

22.3.2005 Ex.P1, application for marking his presence before the Sub -Registrar Ex.P2, affidavit Ex. P3, Jamabandi for the year 2010-11 Ex.P4, legal notice dated 17.3.2006 Ex.P5 and receipts Ex.P6. Ravail Singh, marginal witness to agreement to sell deposed as PW2 and identified his signatures at point A on the agreement to sell. Avtar Singh Lambardar, PW4 identified his signatures at point B on the agreement to sell. Sham Lal Deed writer as PW4 proved on record FIR lodged by him regarding misplacing of record. He further stated that the agreement Ex.P1 was scribed by him at the instance of parties. He also proved on record his register as Ex.PW5/1.

On behalf of the defendants, Pawan Kumar defendant No.2 appeared as DW1 and reiterated his version as per the written statement. Tajinder Pal Singh Assistant/Clerk State Bank of India appearing as DW2 proved on record certified copy of page No.1 & 2 of the Current Account opened in Form Ex.DW-2/A and Ex.DW-2/B. Besides, Sukhpreet Kaur, Finger Print and Handwriting Expert appeared as DW3 and Arun Wahi, Programmer LIC of India appeared as DW4.

The Ld. Trial Court noted that no doubt there was some contradiction during the cross examination of PW1 Sarwan Singh, PW-2 Ravail Singh, PW3 Avtar Singh, attesting witnesses with regard to the purchase of stamp papers. PW1 Sarwan Singh had deposed that the stamp papers were purchased by the son of Chaman Lal and Deed Writer. PW2 Ravail Singh deposed that stamp papers were purchased by Sarwan Singh himself. PW3 Avtar Singh deposed that Chaman Lal along with Deed Writer brought the stamp papers for agreement and PW4 Deed Writer deposed that he did not know who purchased the stamp papers. It was held

of the property were clearly mentioned in the agreement.

It also noted that during their cross-examination, there were contradictions in the statement of PW1 Sarwan Singh, PW2 Ravail Singh and PW3 Avtar Singh regarding the place where the agreement to sell was written. Learned court held that this was not material because what was essential to be proved was that at the time of appending their signatures to the agreement the contents thereof were read over to the parties in the presence of witnesses and the witnesses must have signed the agreement in presence of each other. This fact has duly been proved by the Deed writer DW4, who deposed that he got the agreement typed by the steno-typist on the instructions of Chaman Lal. He read over and explained the contents thereof to Chaman Lal in the presence of Ravail Singh and Avtar Singh and that the witnesses Avtar Singh and Ravail Singh signed at the house of Chaman Lal and the signatures of the plaintiff were also appended in the house of Chaman Lal.

Regarding the opinion of DW3 Sukhpreet Kaur, Finger Print & Handwriting Expert, the Trial court noted that though she had opined that the questioned signatures marked as Q1 to Q4 did not tally with the standard signatures, however, she admitted in her cross examination that as there was a gap of about 15 years between the questioned and the standard signatures, natural variations would emerge in the signatures of the same person written after 15 years. Hence, the Court concluded that the defence of forgery and fabrication was not proved.

The Court did not accept the alternative defence of the defendants that

to Chaman Lal and also used to get advance against the delivery of his crops at the Commission Agent's shop and that the cheques proved to have been issued to late Chaman Lal must have been for the discharge of liability of the plaintiff. Learned Court noted that the defendants had not proved on record any account book of deceased Chaman Lal to show that the plaintiff had taken advance. It was noted that the amount of cheque No.1470382 dt. 23.3.2005 was paid to Chaman Lal through account payee cheque and cheque No.1470383 of Rs.2,50,000/- was paid to Pawan Kumar. While the first cheque was encashed by Chaman Lal the second cheque was issued for "Self" and on its back Pawan Kumar-defendant No. 2 had appended his signatures. Hence he could not deny that he did not have knowledge regarding receipt of Rs.7,50,000/- by deceased Chaman Lal.

The Trial Court further held that the plaintiff had been able to prove that he was ready and willing to execute the agreement. He had proved on record the application for marking presence before the Sub-Registrar and the affidavit dated 6.3.2006, the date fixed for execution and registration of sale deed. The Court held that merely by alleging that the plaintiff was aware of the death of Chaman Lal before 6.3.2006 and despite that he went to the office of Sub-Registrar for execution of the sale deed would not disprove the fact that he was ready and willing to perform his part of the contract. The defendants being the legal heirs of Chaman Lal were held bound to perform the part of agreement of deceased Chaman Lal. Accordingly the suit was decreed.

Before the Lower Appellate Court the defendants again referred to the discrepancy in the statements of attesting witnesses Ravail Singh PW2, Avtar Singh PW3 and Deed Writer Sham Lal PW5. It was submitted that the attesting

witnesses PW2 and PW3 had deposed that the agreement Ex.P1 was in the handwriting of Deed Writer but the same was a typed document. Learned Lower Appellate Court considering this contention observed that Avtar Singh PW3 during his cross examination had categorically deposed that prior to the execution of the agreement it was hand written as 'Kucha'. The Court held that this answers the discrepancy. Further, the discrepancy in the statements regarding purchasing of stamp papers was also held to be not material to convince the Court to discard the agreement as a forged document. Another discrepancy pointed out was that Deed Writer Sham Lal as PW4 had deposed during cross examination that he had entered agreement Ex.P1 at Sr.No.162 of his register but in the agreement, the Sr.No.4 is mentioned. The Court noted that wrong mentioning of serial number or failure to mention any serial number in the agreement was not such a vital lapse as mentioning of serial number of the deed writer's register on the agreement/document is not a requirement of law. This was particularly so as deed writer had categorically deposed that the agreement was executed with the consent and knowledge of Chaman Lal. He had further stated that the agreement was prepared at his shop but signatures of witnesses were obtained at the house of Chaman Lal. Moreover, PW2 attesting witness, had clearly deposed during his cross examination that the writing was done in presence of Sarwan Singh-plaintiff. He remained present during the said period and appended his signatures as marginal witness. He further deposed that the stamp papers had three leafs of the denomination of Rs.50/- each and that the agreement was scribed at the Karyana Shop of Chaman Lal. The Court held that PW2 has affirmed that the signatures of the marginal witnesses were obtained at the shop of Chaman Lal

where the parties were present. His deposition also stood corroborated as actually three leafs of denomination of Rs.50/-had been used in the agreement.

Thus, the Ld. Lower Appellate Court affirmed the findings of the Trial Court.

Mr. Yogesh Goyal Ld. Counsel for the appellant again reiterated the same arguments about the contradictions in the statements of the PWs. These have already been considered by the Courts below. The Courts have duly noted the contradictions but held that on the basis of these contradictions it cannot be held that the agreement is fabricated. The findings of fact returned by the Courts below cannot be held to be perverse.

No question of law arises for decision in this appeal.

Dismissed.

July 03, 2018

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(HARINDER SINGH SIDHU)

JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No